

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., S.W.
Washington, DC 20554

December 16, 2014

U.S. Mail and E-mail

James Chelmowski
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Chicago, IL 60631
jchelmowski@comcast.net

Jacquelyne Flemming
AT&T Corp.
1120 20th Street, N.W.
Suite 1000
Washington, DC 20036
jw1196@att.com
Registered Agent for AT&T

Re: *James Chelmowski v. AT&T Mobility LLC*, FCC Docket No. 14-260, File No. EB-14-MD-016

Dear Ms. Flemming:

We have received the formal complaint filed by James Chelmowski (Mr. Chelmowski) against AT&T Mobility LLC (AT&T) under Section 208 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 208.¹ Mr. Chelmowski already should have served AT&T with a copy of the Complaint.² If Mr. Chelmowski has not served AT&T, AT&T should contact us immediately.

Michael Engel and I are Commission counsel for this proceeding. Mr. Engel's phone number is (202) 418-1516, and his e-mail address is michael.engel@fcc.gov. My phone number is (202) 418-7335, and my e-mail address is lisa.saks@fcc.gov. This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding.

¹ *Formal Complaint of James Chelmowski*, FCC Docket No. 14-260, File No. EB-14-MD-016 (filed Dec. 11, 2014) (Complaint).

² See 47 C.F.R. § 1.735(d).

Procedural Matters

Sections 1.720 through 1.736 of the Commission's rules govern Section 208 formal complaint proceedings. 47 C.F.R. §§ 1.720-1.736.³ We modify certain of the Commission's rules for the purposes of this proceeding. First, we modify Commission rules 1.726(a) and 1.729(a) to require Mr. Chelmowski to file a reply to AT&T's answer that addresses any factual allegation or legal argument in the answer, regardless of whether it purports to support an affirmative defense.⁴ Mr. Chelmowski's supplemental interrogatories (if any) may address any factual allegation or legal argument in the answer, regardless of whether it purports to support an affirmative defense. Second, we modify rules 1.724(c) and 1.726(c) to the extent that we do not require the answer and reply to contain proposed findings of fact or conclusions of law.⁵ In light of information in the Complaint that the parties have already attempted to discuss settlement, we also waive section 1.724(h) of the Commission's rules, which requires that the defendant certify that it has discussed the possibility of settlement.⁶

Please note that all written submissions in this proceeding must be filed with the Commission Secretary by sending the submission by regular mail addressed to the Secretary, or by electronically filing the submission with the Commission's online Electronic Comment Filing System (ECFS) (all documents filed after January 12, 2015 must be filed online through ECFS).⁷ Filings must prominently contain the FCC Docket Number and the case file number referenced above, and must include proof of service. Please also email Michael Engel and me a courtesy copy of all filings.

Please also note that this proceeding is restricted for *ex parte* purposes pursuant to 47 C.F.R. Part 1, Subpart H. In addition, the parties must retain all records that may be relevant to

³ See also *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*); Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*) (discussing the procedures pertaining to formal complaint proceedings). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. See *Formal Complaints Order*, 12 FCC Rcd at 22550, para. 120; 47 C.F.R. §§ 1.721(a)(5), 1.724(g).

⁴ Commission rules 1.726(a) and 1.729(a) limit the complainant to addressing, in its reply and supplemental interrogatories, only the "specific factual allegations and legal arguments made by the defendant *in support of its affirmative defenses*." 47 C.F.R. §§ 1.726(a), 1.729(a) (emphasis added). Requiring a reply that addresses the Complaint's factual and legal assertions will expedite the creation of a full record.

⁵ See 47 C.F.R. §§ 1.724(c) and 1.726(c) (requiring an answer and reply to contain proposed findings of fact and conclusions of law). Experience has shown that proposed findings of fact and conclusions of law are of limited value at this stage of the proceedings. The answer and reply still must include comprehensive factual support and a thorough legal analysis, as required by Commission rules 1.724(b)-(c) and 1.726(a), (c). 47 C.F.R. §§ 1.724(b)-(c), 1.726(a), (c). We also waive Commission rule 1.735(e)'s requirement that we send a defendant a copy of the complaint even if the defendant has already been served. 47 C.F.R. § 1.735(e).

⁶ 47 C.F.R. §§ 1.721(a)(8), 1.724(h).

⁷ See, e.g., 47 C.F.R. § 1.7.

the Complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review.⁸

Schedule for Further Proceedings

1) By **January 16, 2015**, AT&T must file and serve an answer to the Complaint that complies with Commission rule 1.724, as modified by this letter.⁹ Responses to any motions filed with the Complaint should be submitted with the answer.¹⁰

2) By **January 16, 2015**, AT&T also must file and serve its request for interrogatories, if any, and any opposition and objections to AT&T's request for interrogatories, if any.¹¹

3) By **January 26, 2015**, Mr. Chelmowski must file and serve a reply to the answer that complies with this Notice of Formal Complaint and Commission rule 1.726.¹²

4) By **January 26, 2015**, Mr. Chelmowski must file and serve its second request for interrogatories, if any, and file and serve any opposition and objections to AT&T's request for interrogatories, if any.¹³

5) By **February 2, 2015**, AT&T must file its opposition and objections to Mr. Chelmowski's second request for interrogatories, if any.¹⁴

After Commission Staff has reviewed the above-scheduled filings, Staff will contact the parties regarding the next stages of the proceeding.

⁸ See 47 U.S.C. §§ 154(i), 208(a); 47 C.F.R. § 42.7.

⁹ 47 C.F.R. § 1.724.

¹⁰ Except in rare circumstances, motions to dismiss should not be filed. *Formal Complaints Recon Order*, 16 FCC Rcd at 5696, para. 34 ("We find this practice of filing a separate motion to dismiss to be unnecessary, in virtually all cases...[T]he Commission's rules are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint...[W]e remind defendants that the grounds for a motion to dismiss ordinarily should be raised in the answer alone rather than in a separate pleading.").

¹¹ See 47 C.F.R. § 1.729.

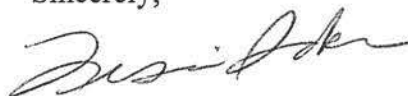
¹² See 47 C.F.R. § 1.726.

¹³ See 47 C.F.R. § 1.729.

¹⁴ See *id.*

We issue this letter ruling under Sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, Sections 1.3 and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.720-1.736, and the authority delegated in Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa J. Saks", written in a cursive style.

Lisa J. Saks
Deputy Chief
Market Disputes Resolution Division
Enforcement Bureau

cc: Michael Engel